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Attorney General Martha Coakley
Attn: Antitrust Division
Office of Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

RE: Opposition to Partners Healthcare Settlement, Civil Action 14-2022

9/11/14

Dear Attorney General Coakley:

This is my public comment on Civil Action 14-2022, filed on 6/24/14 with the Suffolk Superior Court and titled "Joint Motion for Entry of Final Judgment by Consent."

I live next door to a Partners Healthcare facility, Newton-Wellesley Hospital, and I am begging you to NOT allow Partners Healthcare to expand by merging with South Shore Hospital, Hallmark Health, or anyone else. In fact, I would urge your office to do everything in its power to break up Partners Healthcare altogether.

Attorney General Coakley – you may think that you have written a good consent judgment that will rein in Partners Healthcare's costs, but your office could hire a thousand lawyers, and it would still never get Partners Healthcare to do anything they do not want to do. Even now, there is some tiny clause in the judgment or perhaps some tiny adverb with-in a tiny clause in the judgment that a dozen Partners Healthcare lawyers are busy torturing into a convoluted meaning that will eventually prove that what you think you agreed to - is not what you agreed to. In fact, over time, Partners Healthcare will manage to transform every single thing that your office thinks it is putting in place today to be exactly what Partners Healthcare wants tomorrow. That is "The Partners Way."

I'm going to describe my own rather silly and insignificant personal experience with "The Partners Way," as perhaps a warning of what you can expect. But I would first like to remind you of something more serious and significant. I would like to remind you that placing limits on the power of a single governing entity over its citizens is one of the most significant achievements of the Massachusetts Constitution. The separation of Massachusetts government power into executive, legislative, and executive branches, was written into the first section¹ of the Massachusetts Constitution in 1780 by John Adams specifically to control any single power in the Massachusetts government so that "to the end it may be a government of laws and not of men." Mr. Adams did not write "to the end it may be a government of corporations and not of men" and he did not write "to the end it may be a government of Harvard men and not of Non- Harvard men." The Commonwealth is not to be ruled by nobility, even the self-appointed nobility of Partners Healthcare. Attorney General Coakley, surely you must see the tremendous financial and

¹ Article XXX of *A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts*.

political clout that Partners Healthcare wields in this state. They are already more powerful than any branch of the State government. Please do not let them grow any larger.

Here is the story of my own experience with "The Partners Way." I apologize in advance for the huge level of detail provided for what may appear to be a trivial issue to many.

In December 2004, Newton-Wellesley Hospital (NWH) filed an application for a Special Permit to relocate and expand its existing Emergency Department and to extend its existing parking garage structure to add an additional 570 parking spaces. NWH is in a Single Residence 2 Zoning District, and the new parking lot extension would bring the garage extremely close to two houses on *Circle, a small circle of four houses directly behind NWH. [I am omitting the precise name of the circle to protect the privacy of its past and future residents, all of whom have been extremely nice and considerate neighbors.] My family and I purchased our home on *Circle in 1993. NWH joined Partners Healthcare in 1999.² Our home on *Circle is now the only home not owned by Partners Healthcare.

Because the proposed NWH construction violated many zoning ordinances in its Single Residence 2 Zoning District, NWH had to apply for Special Permit from the Newton Board of Aldermen in order to build. The public hearings for the Special Permit occurred on 1/13/05 and 2/15/05, and NWH also held informational meetings at its facilities during this time frame.

In February and March 2005, NWH purchased the two homes on *Circle³ that were closest to the proposed construction. At the hearings and informational meetings, NWH representatives gave several reasons for these purchases, including A) helping out the single older widows who lived there, and B) supplying homes to visiting doctors from other medical institutions⁴. Importantly, at one of the public meetings, Dr. Jellinek, then president of NWH, stated that the Hospital would consider selling the two *Circle houses back after the project was over. Once this suggestion was made by Dr. Jellinek, getting NWH to sell back the houses became one of the major requests made by the neighborhood in exchange for the granting of the Special Permit, which, again, would allow construction that violated many zoning ordinances in the residential neighborhood.

A neighborhood petition was signed by 60 neighbors, asking for four conditions in the Special Permit. Importantly, the petition clearly stated that "the undersigned support Newton-Wellesley Hospital's emergency department expansion plans". All the conditions were related to non-emergency department features of the Special Permit, including removing 60 spaces at the rear of the proposed parking garage extension, and the sale of the *Circle Houses. During the Special Permit process, however, Partners Healthcare sent out several mass mailings to the entire city of Newton, characterizing the neighbors as being against the new emergency department, when this was absolutely not true. Some of us have spent years apologizing for our heartless opposition to the emergency department, opposition which never ever occurred.

The neighborhood did not get the requested parking space reduction, but we had almost universal support from the Aldermen on the sale of the houses. At the very last minute of the "negotiations," however, and after months of public debate, Partners

² Partners Healthcare web site.

³ NWH would purchase the third *Circle house in September 2010.

⁴ No visiting doctors ever appeared. After a few years and the purchase of three more residential homes and one non-residential parcel bordering NWH, the home purchase reason changed to "supply a buffer zone from its residential neighbors."

Healthcare suddenly introduced a completely phony "Charities Law." This "Charities Law" supposedly required that NWH could only sell the houses in the future at "Cost Basis" (creatively redefined by Partners as Fair Market Value) or they would "get in trouble" with the Attorney General. Because of this complete lie told by Partners Healthcare, here is the Board Order condition that we asked for, and here is the Board Order condition we got.

A) The simple straightforward language initially requested by the neighborhood in the Special Permit regarding the sale of the houses.

*"To maintain good relations with the community, the Hospital agrees that, prior to the issuance of any further Special Permit from the Board of Aldermen, it will sell the houses located at [*Circle] on the open market at fair market value. These sales will be free and clear without the imposition of any future obligation of the house buyer to the Hospital. The Hospital will also agree to rent each house during the period that they are the house owner to single family tenants with minimum one year leases and will also not leave the houses vacant for periods greater than 6 months."*

B) The complicated and unenforceable language the neighborhood obtained in Condition 30 of Board Order 470-04, issued on 4/19/05, granting the Special Permit.

*"No later than five (5) years following the issuance of a certificate of occupancy for the Emergency Department authorized in this special permit by the City of Newton Inspectional Services Department, the Hospital will list the Properties at [*Circle] for sale as residential homes to be sold to bona fide purchasers upon reasonable terms and conditions usually associated with arms length residential purchases and sales. The Hospital will also make Hospital Employees aware of the listing. Any sale of the Properties shall be contingent upon the Hospital and bonafide purchaser agreeing upon mutually satisfactory and reasonable terms and a reasonable sales price in a written Purchase and Sales Agreement. In no event shall the Hospital be obligated to sell the Properties if doing so will cause the Hospital to fail to sell at Fair Market Value. That term shall include recovery of costs invested in the Properties by the Hospital including, without limitation, costs associated with capital improvements, repairs, and acquisition of the Properties, so that the Hospital fulfills its statutory and fiduciary obligations regarding investments, unless the Attorney General of the Commonwealth approves a Fair Market Value sales price which does not satisfy this "Fair Market Value" definition. If the Hospital shall receive an offer for less than the defined Fair Market Value and shall not wish to sell the Properties at that price without seeking authority for the sale from the Attorney General, the Hospital will timely seek such approval and will exercise reasonable due diligence in obtaining such consent. The terms of this condition shall expire on the first day following the first year anniversary of the same execution of the listing agreement for sale of properties. If the Hospital is unable to reach agreement as set forth in this condition for the sale of one or both of the Properties within that period, the period shall be extended for an additional one (1) year period."*

When told about the "Charities Law" by one of the neighborhood negotiators, I could do nothing to counter Partners Healthcare's Cost Basis requirement assertion, despite my best efforts. I was only told about this "Charities Law" during the weekend of 3/20/05, two days prior to the submission of the "neighborhood" agreement to the Land Use Committee on Tuesday 3/22/05. And I did not see the seven year delay or the hopelessly confusing language of Condition 30 until two and a half hours before the Land Use Committee meeting where it was to be presented. On 3/22/05, I called the Attorney

General's Division of Public Charities myself and spoke to a Mr. Brant Casazavant. I was specifically told by Mr. Casazavant that there were no "Cost Basis" restrictions on selling the *Circle houses, other than that they be sold at "Market Value," meaning an arms length sale on the open market.

On 3/22/05, I relayed this information to the neighbors negotiating the neighborhood agreement. I also called The City of Newton's Attorney Ouida Young some time between 3/22/05 and 3/28/05 to relay my information and to ask her where this "Charities Law" existed. In her official capacity as the City of Newton's Attorney, Ms Young had also supported Partners Healthcare's position at the 3/22/05 Land Use meeting by stating that that "legally the Hospital wasn't allowed to lose money on the houses." Ms. Young told me that the requirement of cost basis was "Common Law." She also said that the cost basis requirement was just a "technicality" and that all the Aldermen expected the Hospital to sell the houses. Importantly, I read her the exact sentence from Condition 30 that seemed to guarantee there would never be a sale *"In no event shall the Hospital be obligated to sell the Properties if doing so will cause the Hospital to fail to sell at Fair Market Value,"* (where again Cost Basis has been "redefined" as Fair Market Value") And she again assured me that this was a "technicality" and that the Aldermen expected the Hospital to sell the houses. And the Aldermen did genuinely seem to have this "expectation" in 2005 when they granted Partners Healthcare its special permit to build.

On 3/28/05, I wrote Alderman George Mansfield (Chairman of the Newton Land Use Committee) with the AG information regarding Cost Basis and with Mr. Casazavant's name in case he wanted to verify what I was saying. Nothing I did mattered, however. The Newton Government could not even bother to check the actual written laws or even make a single phone call to the AG's office to check the phony "Charities Law" that Partners Healthcare had invoked to get out of ever selling the houses. If Partners Healthcare had not invoked this phony "Charities Law" that supposedly applied because of their non-profit status, the houses would have gotten sold in order to obtain the Special Permit, because the neighborhood had overwhelming support by the Aldermen on this one issue.

In fact, when the Special Permit issued in 2005, the Aldermen appeared to think that Partners Healthcare had agreed to sell the houses and even officially praised the hospital for "working with the community." According to Newton's 4/5/2005 Land Use Committee Report, *"an agreement reached during the working session deliberations between NWH and the majority of its neighbors and abutters provided that the hospital seek to sell these homes on the open market within five years of occupancy of the new ED, and the Committee agreed to include this as a condition of approval."* [Page 7 of Land Use Committee Report.] This compromise on the houses as well as the establishment of a Neighborhood Council which would *"be a forum for the exchange of ideas and the resolution of complaints"* [Page 7 of report] were grounds for the Aldermen to commend NWH for *"working with the community and reaching agreement with them on may controversial points of the proposal, noting that the petitioner [NWH] had tried hard to address the concerns if the neighborhood."* [Page 8 of report].

Can you see how confident the Alderman were in 2005 in thinking they were in getting NWH to agree to sell the houses? This is probably the same confidence you have now that you have gotten Partners Healthcare to agree to do something they don't want to do. But don't be fooled. Partners Healthcare will never ever do something it doesn't want to do.

On 9/6/11, NWH did put the two*Circle houses on the market, as specified by Condition 30. The only problem was that the homes were offered at such ridiculously high prices as to make them completely unsellable, as shown in Tables 1, below.

Table 1: Sale Prices of *Circle Houses for Sale Specified by Condition 30 of Board Order 470-04		
Address	# *Circle	## *Circle
Offering Date	9/6/2011	9/6/2011
Offering Price	1,347,000	1,431,000
Assessed Value on Offering date	850,800	995,300
Prior Sale Date	3/1/2005	2/2/2005
Prior Sale Price	940,000	1,059,000
Assessed Value on Prior Sale Date	878,000	977,300

NWH added an additional \$800K to the prices that they paid for the houses in 2005, to arrive at the sale prices on the offering date 9/6/11, representing that they have made \$800K in improvements to the houses, in order to justify the ridiculously high sale prices of the houses. The assessment by the City of Newton does not reflect these improvements. In fact, on the offering date, the combined assessment on the houses is slightly lower than when the houses were purchased. At a 12/7/11 meeting, the Newton-Wellesley Hospital Neighborhood Council requested a detailed listing of the extra costs that had been added to the *Circle home purchase prices. At this meeting, Brian O'Dea of Newton-Wellesley Hospital agreed to provide this detailed cost list to the Council. Six months later, on 5/21/12, after repeated written requests, Mr. O'Dea informed the Council that no such list would be made available, as "Financial details are proprietary," a phrase which appears to be the Partners Healthcare motto.

"as stated at our last meeting, the significant investments and capital improvements the hospital has made include new heating systems, structural repairs and improvements, painting, asbestos abatement roofing, etc. Financial details are proprietary." [5/21/12 Letter from Brian O'Dea, NWH]

On 6/8/12, the neighbors filed a "Request for Zoning Enforcement" with Newton's Inspectional Services Department in order to get the houses sold under reasonable terms and conditions as stated in Condition 30 of Board Order 470-04. 18 neighbors signed the original request, and an additional 108 neighbors signed a petition supporting the request which was also filed with Newton's Inspectional Services Department on 6/27/12. As part of the Request for Zoning Enforcement, the neighbors requested the following:

Condition 30 says that the houses can be sold below cost basis (defined as fair market value in Condition 30.) if the Attorney General approves the sale. We know, from consulting with the Attorney General's Office, that the Attorney General would approve any sale at Fair Market Value because there is no requirement by the Attorney General that the houses be sold at cost basis. We suggest that Inspectional Services verify this with the Attorney General, so that Newton-Wellesley Hospital

can put the houses on the market at reasonable terms and conditions. [6/8/12 Request for Zoning Enforcement.]

After filing the request on 6/8/12, I repeatedly wrote requesting a response from Newton's Inspectional Services Department, emphasizing the time sensitive nature of the home sales, which would expire on 9/6/13. We did not receive a response from Inspectional Services until, 3/25/13, almost 10 months after filing our request, despite the time sensitive nature of the request and the 126 neighbor signatures. In their 3/25/13 response, Inspectional Services ruled in favor of the Hospital, stating that:

Condition #30 calls for the Hospital to sell the properties under "reasonable terms and conditions" and upon mutually satisfactory and reasonable terms and a reasonable sales price". To establish a reasonable price and conditions one needs to establish what the cost basis in the property is and then evaluate whether the hospital has a reasonable expectation to either make a profit or, at the very least, not be subject to taking a loss, when selling the subject properties. As we read further in Condition #30 it says that, "In no event shall the Hospital be obligated to sell the Properties if doing so will cause the Hospital to fail to sell at Fair Market Value. That term shall include recovery of costs invested in the Properties by the Hospital including, without limitation, costs associated with capital improvements, repairs and acquisition of the Properties, so the Hospital fulfills its statutory and fiduciary obligations regarding investments, unless the Attorney General of the Commonwealth approves a Fair Market Value sales price which does not satisfy this "Fair Market Value" definition." This section does not necessarily mean that the Hospital is obligated to sell at below Fair Market Value, but rather, that if they should decide to do so, they must seek the Attorney General's permission because of their non-profit status. [3/25/13 Letter from John Lojek, Inspectional Services Department.]

Note that the Cost Basis, not the probability of an actual sale, is now being used by Inspectional Services to define the reasonable price for putting the houses on the real estate market. More importantly, Inspectional Services is still supporting the Partners Healthcare fiction that is Partners Healthcare must "*seek the Attorney General's permission because of their non-profit status,*" to sell at a price less than Market Value (re-defined as Cost Basis in the Board Order.) It appears that once Partners Healthcare made this false claim about needing to seek permission from the Attorney General to sell under cost basis, there was nothing we could do in 2005 or in 2013 to get the City of Newton to check the accuracy of Partners Healthcare's claim⁵.

I then requested an accounting of the Cost Basis that had been applied to increase the sale price of each house by approximately \$400K each. This Cost Basis data was supplied by Inspectional Services on 4/9/13 and shown in Table 2, below. Partners Healthcare claims to have made 176K in improvements to the first *Circle house and 123K in improvements the second *Circle house. They also supplied a list of improvements, which were relatively minor such as "Exterior Painting, Replace Roof, etc." There no were no major renovations

⁵ The actual Massachusetts law that Partners seems to be borrowing, and then altering, seems to be (180.8A(D)). This requires a non-profit Hospital's notification of the AG regarding the sale of a "substantial amount of its assets" and has no cost basis requirement.

such a new kitchen or bath for the 176K and 123K, claimed in “improvements.” In addition Partners Healthcare claimed that they replaced the roof on both *Circle houses, but this is clearly not true on one house which has a visibly old roof in need of repair. I pulled the Building Permits issued for both properties and found a single permit for each house issued on 8/15/05. (“Replace Asphalt Roof, Replace Gutters, Replace Window Sashes, Point Chimney, Brickwork, Replace Heating Furnace, Paint Exterior” for 87K at the first *Circle house, and “Replace Damaged Gutters, Replace Window Sashes, Replace Heating Furnace, Change Electrical Service to 200 Amps, Paint Exterior Wood” for 76K at the second *Circle house.) I just don’t see how it is possible to have spent 300K in improvements on the two *Circle houses without a building permit showing major construction of any sort.

In addition to the 300K in improvements supposedly made to the house, Partners Healthcare added an addition 200K to the first *Circle House and 215K To the second *Circle house for “Cost of Capital.” I assume this means that this means that Partners Healthcare is adding approximately 3% per year in interest to each house without deducting their rental income. Since the “technicality” of Condition 30 allows them to recover costs “without limitation,” [Condition 30], it appears that Partners Healthcare can add anything they want to the Cost Basis, even though finance interest would never be added to the Cost Basis when calculating a capital gain or loss on an asset.

Table 2: Partners Healthcare Defined Cost Basis of *Circle Houses. Provided By Newton Inspectional Services 4/9/13.		
Value	# *Circle	## *Circle
Purchase Price in 2005	940,000	1,059,000
Closing Costs	4,891	4,956
Improvements	175,880	123,175
Cost of Capital	200,205	215,806
Commission [2%]	26,420	28,059
Cost Basis/ List Price in 2011	1,347,396	1,430,996

This has been an 8 year struggle in which Partners Healthcare has used every trick in the book to get out of selling the *Circle houses as part of the agreed upon Board Order for their Special Permit to build a parking garage outside of the governing zoning. In the end Partners got everything it wanted, including written praise from the local government for compromising - without compromising at all. None of the tricks would have worked, however, without Partners Healthcare’s 2005 invocation of the fake “Charities Law” which supposedly forbid them from taking a loss on the house sales, because of their “non-profit” status. So in this trivial example, I would have to say that in the end this was “a government of corporate deceptions and not of laws”

Admittedly, the City of Newton’s Law Department is small and seems to lack the resources to challenge Partners Healthcare on anything. Attorney General Coakley, you may feel that your office simply has more resources, so that this will not be an issue for you.

In reading over the “Joint Motion for Entry of Final Judgment by Consent,” however, I already detect the first important steps along “The Partners Way.” The steps I see (although there may be others) appear on Page 22, Section IV.d.ii, of “Attachment A: Restrictions on Partners Price Growth.” Section IV.d.ii allows Partners Healthcare request an increase from the AG in its TME Growth Cap if it can demonstrate that it

exceeded its TME Cap due to "Unanticipated Market Conditions." If the AG does not agree to an increase, then Partners Healthcare pay petition the court directly for an increase due to "Unanticipated Market Conditions." The definition of "Unanticipated Market Conditions" is a bit vague in Section IV.d.ii, however, being relegated to conditions that "affect utilization, e.g. pandemic, or government imposed change mandating expanded benefits." This means that IV.d.ii just give examples (pandemic or government imposed change) of possible "Unanticipated Market Changes," not an actual definition.

I'm sure that the Attorney General's office thinks it knows what is meant by "Unanticipated Market Change", but that won't matter because IV.d.ii ultimately allows the court to decide what constitutes the type of "Unanticipated Market Conditions" that would allow Partners Healthcare to raise its TME Cap. And believe me, Partners Healthcare is very creative in stretching a financial definition to get what it wants. Please refer to the "Cost of Capital" portion of "Cost Basis" in Table 2.

This is the best and perhaps only chance that the Massachusetts has to rein in Partners Healthcare. Please do not allow Partners Healthcare to expand any further. It is not only that Massachusetts is paying the highest State per capita healthcare in the nation, it is that this high per capita cost is so high that the healthcare industry is more powerful than the State or Local Government. Allowing even more of this industry's huge revenue to flow into the biggest and most ambitious industry player, Partners Healthcare, is a mistake that Massachusetts will never recover from.

Sincerely



Debra Waller